



Appeal of Commercial Securities Corporation, Cons.

portion of the total amount collected in settlement of the claim should be regarded as interest and therefore as income for the year 1930.

However, it is to be noted that the corporation contends that it had claims against its former officers and directors prior to January 1, 1928 totalling approximately \$400,000.00 and that it collected on these claims only \$162,748.00. If the corporation had valid claims in the amount of \$400,000.00 or, for that matter, if it had valid claims arising prior to January 1, 1928 on account of illegal distribution of dividends, or on account of property stolen from it, in any amount in excess of the amount collected, the full amount collected would have to be regarded as reimbursement to the corporation on account of property stolen from it or on account of dividends irregularly distributed and thus no portion of the amount collected could be regarded as income for the year 1930.

But even if the valid claims amounted to less than the amount collected, and the difference should be regarded as interest and therefor as income, a considerable portion of the interest would be attributable to the years prior to January 1, 1928 and therefor should not be included in the measure of the tax imposed by the Act even though received after January 1, 1928. (See Institute of Musical Education, decided by this Board April 21, 1932, in which we held that under the Act as it read in 1931 - the year for which the assessment in question was proposed - it was not intended that gains or income accrued prior to January 1, 1928 should be considered in computing franchise tax imposed by the Act even though received after January 1, 1928).

Finally, it will be noted that the deductible expenses incurred in obtaining the settlement of the claims amounted to well over \$50,000.00, a sum in excess of that portion of the amount collected which could possibly be regarded as income for the year 1930. Consequently, even if some portion of the amount collected were regarded as income for the year 1930, there would still be no net income by which the proposed additional assessment could be measured.

For the above reasons, we are of the opinion that the action of the Franchise Tax Commissioner in overruling the protest of the Appellant to the proposed assessment in question must be reversed.

W R W E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED. ADJUDGED AND DECREED. that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Commercial Securities Corporation, Cons. against a proposed additional assessment in the amount of \$3,076.31 based

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upon the return of said corporation for the year ended December 31, 1930, under Chapter 13, Statutes of 1929, as amended, be and the same is hereby reversed. Said ruling is hereby set aside and said Commissioner is hereby directed to proceed in conformity with this order.

Done at Sacramento, California, this 30th day of January, 1934, by the State Board of Equalization.

R. E. Collins, Chairman  
Jno. C. Corbett, Member  
H. G. Cattell, Member

ATTEST: Dixwell I. Pierce, Secretary